

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

301 State House
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FISCAL IMPACT STATEMENT

LS 6216

BILL NUMBER: SB 29

DATE PREPARED: Feb 26, 2002

BILL AMENDED: Feb 25, 2002

SUBJECT: Various Utility Issues.

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FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☐ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: (Amended) This bill contains the following provisions:

Clean Coal Technology: The bill encourages: (1) new energy generating facilities in Indiana that use clean coal technology and are fueled using Illinois Basin coal resources; (2) advanced technologies that reduce regulated air emissions from existing generating plants; (3) projects to develop alternative energy sources, including renewable energy projects; and (4) the purchase by energy utilities of fuels produced by coal gasification facilities in Indiana.

The bill provides that the Indiana Utility Regulatory Commission (IURC) has jurisdiction over a utility's purchase of clean coal technology from third parties, including the purchase of precombustion coal treated by gasification. The bill directs the IURC to encourage clean coal and energy projects through financial incentives. The bill requires that in order to qualify for certain incentives, projects to reduce regulated air emissions at existing energy generating plants must be located at plants that are primarily fueled by Illinois Basin coal. The bill also provides that the IURC shall encourage and provide incentives for certain clean coal and energy projects only if the projects are in the public interest, convenience, and necessity.

The bill directs the State Utility Forecasting Group to conduct an annual study on the use, availability, and economics of using renewable energy resources in Indiana and to submit a report of its findings to the IURC. The bill also provides that if any provisions concerning clean coal and energy projects are found to be unlawful, the IURC must annually review any approved projects. The bill also requires the State Utility Forecasting Group to conduct an annual regional power market study.

It creates a center for Coal Technology Research to develop technologies to advance the use of Indiana coal. The bill requires the Department of Commerce to pursue available private and public sources of money for the coal research grant fund.

IURC Enforcement Authority: The bill repeals a current provision granting the IURC enforcement powers over utilities and replaces it with a provision authorizing the IURC to impose civil penalties of up to \$5,000 or \$15,000 on public utilities other than telephone companies that provide local service for violations of or noncompliance with utility statutes, rules, and orders. The bill requires the civil penalties to be: (1) deposited in the Commission Public Utility Fund Account; (2) refunded directly to customers; or (3) awarded to another utility harmed by the violation or noncompliance.

The bill permits the Attorney General to recover attorney fees in successful actions. The bill authorizes the IURC to order a utility to provide service in emergency situations. It also authorizes the IURC to require a public utility to post a reasonable performance bond before operating.

IURC Merger Authority: The bill provides that the IURC has jurisdiction over purchases of: (1) mergers of public utilities, utility companies, and holding companies of public utilities and utility companies; and (2) certain merchant power plants. The bill requires the IURC to issue an order not later than 135 days after a petition for approval of a merger is filed.

Jurisdiction over Merchant Power Plants: The bill provides notice and hearing procedures for siting of a merchant power plant. The bill establishes the criteria the IURC must consider when considering a merchant power plant application, including preferred siting locations. The bill provides that when considering whether to approve a plant, the IURC must obtain a recommendation from the Department of Natural Resources (the "Department") regarding the plant's planned use of and potential effect on a water resource. The bill requires a merchant power plant that seeks: (1) approval from the IURC; or (2) alternative regulation by the IURC; to establish proof of financial responsibility in an amount determined by the IURC. The bill specifies that the IURC has jurisdiction over a merchant power plant that has made a significant alteration in the labor used to construct or remodel the facility. The bill provides that certain records of a merchant power plant are not public records.

Effective Date: (Amended) Upon passage; July 1, 2002.

Explanation of State Expenditures: (Revised)

State Utility Forecasting Group: The bill expands the scope of the State Utility Forecasting Group. It requires the Group to conduct an annual study on the use, availability, and economics of using renewable energy resources in Indiana and to submit a report of its findings to the IURC for inclusion in the Commission's annual report to the Regulatory Flexibility Committee. The Group's activities are funded by the IURC.

Clean Coal Provisions:

IURC: This provision will have an administrative impact on the IURC in so far as it will require the Commission to develop a process for reviewing and approving projects and operations that qualify for the financial incentives provided in the bill. The bill will also require the IURC and Office of the Utility Consumer Counselor (OUCC) to develop and approve any changes in the ratemaking procedures of the utilities that qualify for the financial incentives provided for in the bill.

Department of Commerce: The bill requires firms which qualify for the incentives to submit a monthly report to the Department of Commerce on the quantity of Illinois Basin coal purchased for use in new generation facilities, the occupation and use taxes paid on the coal, and other information that the

Department may require. The Department is expected to absorb any increase in administrative costs caused by the provision.

Center for Coal Technology Research: This proposal establishes the Center for Coal Technology Research and the Coal Technology Research Fund. The bill would allow the director of the Department of Commerce to:

- (1) organize the Center;
- (2) execute contracts for its operation;
- (3) receive money from any source;
- (4) expend money for appropriate activities;
- (5) execute agreements, cooperate with, and use the resources of Purdue University and other state educational institutions, governmental agencies, and interest groups; and
- (6) subject to the approval of the Budget Agency, employ personnel as necessary for the efficient administration of the Center's operations.

Any expenditures by the Center are indeterminable and will depend on the financial organization and operation of the Center. The proposal contains no appropriations.

The Budget Agency shall administer the Coal Technology Research Fund, created by this bill. The fund is established for the purpose of providing money for the Center and for the director to carry out the operations of the Center. The Budget Agency is expected to be able to administer the fund given its current resources.

The bill would allow qualifying energy producers to receive up to an additional 3% rate of return over what they would have otherwise received. If electricity rates increase, the state's utility costs could increase.

IURC Enforcement Authority:

IURC : This proposal extends the IURC's fining and enforcement authority over regulated gas and electric utilities. The proposal would give the IURC the ability to impose civil penalties, issue cease and desist orders, and modify permits issued by the Commission. The IURC is expected to be able to absorb any additional administrative costs associated with this proposal.

Attorney General's Office: The proposal also authorizes the Office of the Attorney General to bring an action to enforce an order of the Commission. While this provision may increase the Attorney General's costs, it allows the Office to recover costs if the state prevails in the action.

IURC Merger Authority:

IURC: This bill increases the authority of the IURC over mergers, reorganizations, or the acquisition of control of certain public utilities as well as certain transactions involving clean coal technology. While this bill will expand the IURC's authority and potentially increase the number of hearings held by the IURC, any impact on the Commission is expected to be absorbed using its current budget and resources. The Office of the Utility Consumer Counselor (OUCC) would also participate in any utility merger approval proceedings. Any additional cost to the OUCC is also expected to be covered using existing personnel and resources.

IURC Merchant Power Plant Jurisdiction:

IURC: This bill places merchant power plants under the jurisdiction of the IURC. Under this proposal, a new merchant power plant would be required to petition the IURC for approval to construct the facility. The bill requires the IURC to consider the following when reviewing a plant's petition: location, need, financing, reporting requirements, a plant's impact on utility suppliers and customers, and recommendations from the Department of Natural Resources. The bill also requires the Commission to establish rules and standards related to a potential plant's closure. The IURC is required by this bill to give preference to brownfield sites, sites of existing plants, or other sites identified for power plant or heavy industrial development in local land use plans.

The bill also requires the IURC to exercise jurisdiction over exiting merchant power plants if the operators of a facility do not use contractors, subcontractors, or work crews who have not completed a jointly administered labor and management program approved by the United States Department of Labor's Bureau of Apprenticeship Training.

Depending on the number of facilities that seek regulatory approval, this bill is expected to increase the administrative costs of the IURC. However, any increases in the IURC's administrative costs are expected to be absorbed using existing staff and resources. The bill requires the IURC to rule on a petition within 18 months after it has been filed. The Office of the Utility Consumer Counselor (OUCC) would also participate in any utility merger approval proceedings. Any additional cost to the OUCC is also expected to be covered using existing personnel and resources.

DNR: The bill requires the Department of Natural Resources (DNR) to make a recommendation to the IURC regarding a proposed merchant power plant's planned use of and its potential effect on water resources. The bill allows the Department to make its recommendation based on a specified assessment provided by the petitioning power plant or through the Department's own activities. The impact of this bill on the DNR will depend on the number of powerplants that petition the IURC and on the specific requirements of each site.

While the provisions above could increase the costs of the IURC and OUCC, it is presumed that any increase will be covered using existing resources or using the funding mechanism currently provided for in law. (See *Background on IURC and OUCC Funding*, below)

Background on IURC and OUCC Funding: The operating budgets of the IURC and OUCC are funded by regulated utilities operating in Indiana. The IURC determines the rate at which to bill the utilities based on the two agencies' budgets, less reversions, divided by the total amount of gross intra-state operating revenue received by the regulated utilities for the previous fiscal year. Based on this formula, utilities are currently billed approximately 0.10% of their gross intra-state operating revenues to fund the IURC and OUCC. In FY 2001, fees from the utilities and fines generated approximately \$8.6 M.

Background Information on Merchant Power Plants: As of August 2001, there were seven merchant power plants operating in Indiana. Six plants have petitions currently under review with the IURC.

Explanation of State Revenues: (Revised) *Center for Coal Technology Research:* This proposal establishes the Coal Technology Research Fund. The fund consists of money appropriated by the General Assembly and gifts, grants, and bequests. Money in the fund at the end of a state fiscal year does not revert to the State General Fund. The Treasurer of State must invest money in the fund not currently needed to meet the

obligations of the fund in the same manner as the Treasurer may invest other public funds. The establishment of the fund could result in an increase in state revenues if contributions to the fund are made by non-state sources.

IURC Enforcement Authority: Under this bill, the IURC could impose a civil penalty of up to \$5,000 for the first violation or act of noncompliance by a utility and \$15,000 for the second and subsequent violations. Fines collected under this provision would be directed to:

- 1) customers of the violating utility, if the violation directly impacts ratepayers;
- 2) another utility, if the violation directly harms another utility; or
- 3) the IURC for public interest projects, if the violation neither directly impacts ratepayers or harms another utility.

It is not known in how many instances the IURC would impose monetary penalties.

If the provisions in this bill are able to generate new investment in Indiana, it could increase the revenue the state receives from the various corporate taxes. Likewise, if more jobs are created, the state's Income and Sales Tax base would also increase.

Explanation of Local Expenditures: Local governmental entities, including schools, would be subject to any increases in the cost of the electricity caused by the provisions in this bill.

Explanation of Local Revenues: If this bill encourages firms to make additional investments in Indiana, it could increase the property tax base of local taxing units.

State Agencies Affected: Indiana Utility Regulatory Commission; Office of the Utility Consumer Counselor; Department of Commerce; Legislative Council; Budget Agency; Treasurer of State.

Local Agencies Affected: Local governmental entities.

Information Sources: Mike Leppert, Executive Director, IURC, (317) 232-2714; Indiana Utility Regulatory Commission, *2000-2001 Annual Report*.